

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NICOLE H.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. C22-5778-RSM

**ORDER REVERSING DENIAL OF
BENEFITS AND REMANDING
FOR FURTHER PROCEEDINGS**

Plaintiff seeks review of the denial of her application for Supplemental Security Income. Plaintiff contends the ALJ erred by finding that she did not successfully rebut the presumption of non-disability, and by rejecting her symptom testimony and Dr. Ruddell's medical opinion. Dkt. 12. As discussed below, the Court **REVERSES** the Commissioner's final decision and **REMANDS** the matter for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

BACKGROUND

Plaintiff is 49 years old, has at least a high school education, and has worked as a nursery school attendance and medical biller. Admin. Record (AR) 133–134. In April 2020, Plaintiff applied for benefits, alleging disability as of October 1, 2010. AR 86, 99. Plaintiff's application was denied initially and on reconsideration. AR 97, 113. The ALJ conducted a hearing in July

2021, where Plaintiff amended her alleged onset date to April 20, 2020. AR 36–64, 118. In August 2021, the ALJ issued a decision finding Plaintiff not disabled. AR 115–40.

DISCUSSION

The Court may reverse the ALJ’s decision only if it is legally erroneous or not supported by substantial evidence of record. *Ford v. Saul*, 950 F.3d 1141, 1154 (9th Cir. 2020). The Court must examine the record but cannot reweigh the evidence or substitute its judgment for the ALJ’s. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When evidence is susceptible to more than one interpretation, the Court must uphold the ALJ’s interpretation if rational. *Ford*, 950 F.3d at 1154. Also, the Court “may not reverse an ALJ’s decision on account of an error that is harmless.” *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

1. *Chavez Acquiescence Ruling*

Plaintiff contends the ALJ erred by finding that she did not successfully rebut the presumption of continuing non-disability. Dkt. 12 at 2–3.

Plaintiff previously filed an application for SSI benefits in November 2017, and the ALJ issued an unfavorable decision in March 2019 finding Plaintiff not disabled. AR 68 –79. Plaintiff did not appeal the ALJ’s decision, making the ALJ’s decision administratively final. 20 C.F.R. § 416.1455. Plaintiff protectively filed the application at issue in April 2020, and the ALJ again issued another unfavorable decision finding Plaintiff not disabled. AR 86, 99, 118–36. In this latter decision, the ALJ considered the *Chavez Acquiescence Ruling* and found that the “current available evidence continued to generally support the limitations noted previously, and the presumption of continuing non-disability has not been successfully rebutted.” AR 118.

The ruling provides that “a final decision by an ALJ that a claimant is not disabled gives rise to a presumption that the claimant continues to be not disabled after the period

1 adjudicated” Acquiescence Ruling 97-4(9). This presumption “applies when adjudicating
2 a subsequent disability claim with an unadjudicated period arising under the same title of the Act
3 as the prior claim.” *Id.* To successfully rebut this presumption, the claimant must show that
4 there has been a “changed circumstance” during the unadjudicated period, such as a change in
5 the claimant’s age category, an increase in the severity of the claimant’s impairment(s), the
6 alleged existence of an impairment(s) not previously considered, or a change in the criteria for
7 determining disability.” *Id.*

8 Plaintiff contends her “changed circumstance” is evident in this case because the ALJ
9 found that she has a new severe impairment not previously considered in the 2019 decision and
10 her symptoms have worsened. Dkt. 12 at 15. The Court need not assess the merits of Plaintiff’s
11 argument, because as Defendant points out, even if the ALJ had erred in failing to consider
12 Plaintiff’s “changed circumstances,” the error is harmless. *Plummer v. Berryhill*, 747 F. App’x
13 631, 632 (9th Cir. 2019) (unpublished) (“The ALJ’s decision did not rest solely on *res judicata*;
14 rather, the ALJ also conducted a thorough review of the medical records and testimony to make
15 an independent nondisability finding.”); *Cha Yang v. Comm’r of Soc. Sec. Admin.*, 488 F. App’x
16 203, 204 (9th Cir. 2012) (unpublished) (finding the ALJ’s misapplication of *Chavez* harmless
17 because the ALJ weighed new medical evidence to formulate claimant’s RFC).

18 Though the ALJ stated that the presumption had not been successfully rebutted, the ALJ
19 did not actually apply the presumption. Outside the ALJ’s reference to the 2019 decision, the
20 ALJ did not seem to refer to the previous ALJ’s prior findings. *See* AR 118. Further, as Plaintiff
21 stated, the ALJ determined Plaintiff had a new severe impairment, and the ALJ proceeded with
22 the five-step evaluation process by considering new evidence that was not available to the
23 previous ALJ, assessing a new residual functional capacity (RFC), and finding different jobs

1 Plaintiff is able to do. *See* AR 120–136. Thus, the ALJ’s error is harmless here. As to whether
2 the ALJ’s new findings were erroneous, the Court now addresses.

3 **2. Plaintiff’s Symptom Testimony**

4 Plaintiff contends the ALJ erred by rejecting her symptom testimony. Dkt. 12 at 6–7.
5 Though unclear, Plaintiff also seems to assign error to the ALJ’s failure to discuss the following
6 specific symptoms: memory loss, nervousness, fatigue, and poor concentration. *Id.* at 4; 16 at 2–
7 3. The Court disagrees that the ALJ failed to discuss these symptoms specifically, but as further
8 discussed below, it nonetheless finds the ALJ’s symptom evaluation overall lacking.

9 Plaintiff testified to having anxiety, irritability, post-traumatic stress disorder, and
10 sleeping problems.¹ AR 46, 49. She stated that due to her symptoms, she avoids interacting with
11 people, going to grocery stores, and driving, and she has sleeping problems. *See* AR 45–49. She
12 testified she has “episodes” three to four days a week where she cannot get out of bed, take care
13 of her daughter, or do household chores due to poor sleep. AR 51–52. She stated she takes
14 medication for her symptoms, but she has not found them effective. AR 47. She explained that
15 to reduce or control her symptoms, she has to “shut down” and remove herself from situations
16 that trigger her symptoms. AR 48, 50–52.

17 Where, as here, an ALJ determines a claimant has presented objective medical evidence
18 establishing underlying impairments that could cause the symptoms alleged, and there is no
19 affirmative evidence of malingering, the ALJ can only discount the claimant’s testimony as to
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21 ¹ Plaintiff also testified to having symptoms from her physical impairments, but because Plaintiff only challenged the
22 ALJ’s evaluation of her mental health symptoms in her Opening Brief, the Court does not address the ALJ’s evaluation
23 of Plaintiff’s physical symptoms. *Carmickle v. Comm’r of Soc. Sec. Admin.*, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008)
(declining to address an ALJ’s finding because the plaintiff “failed to argue th[e] issue with any specificity in his
briefing”).

1 symptom severity by providing “specific, clear, and convincing” reasons supported by
2 substantial evidence. *Trevizo v. Berryhill*, 871 F.3d 664, 678 (9th Cir. 2017). “The standard
3 isn’t whether our court is convinced, but instead whether the ALJ’s rationale is clear enough that
4 it has the power to convince.” *Smartt v. Kijakazi*, 53 F.4th 489, 499 (9th Cir. 2022).

5 In this case, the ALJ rejected Plaintiff’s testimony based on her mental status
6 examinations. AR 127–32. “When objective medical evidence in the record is *inconsistent* with
7 the claimant’s subjective testimony, the ALJ may indeed weigh it as undercutting such
8 testimony.” *Smartt*, 53 F.4th at 498. However, the ALJ’s reliance on Plaintiff’s mental
9 examinations is unavailing. The ALJ focused on the fact that Plaintiff was continuously found as
10 pleasant, cooperative, with speech within normal limits, linear thought process, and mostly clear
11 thought content during her counseling sessions. AR 127–32. But a closer look at Plaintiff’s
12 treatment notes show they substantially reflect, rather than negate, Plaintiff’s testimony. For
13 example, Plaintiff often reported increase in her symptoms, she repeatedly discussed “episodes”
14 where she struggled to get out of bed, and she consistently described her angry outbursts, her
15 anxiety about going outside and potentially interacting with others, her irritability when talking
16 to others, and her night terrors. AR 493–94, 549–50, 555–57, 559–60, 570, 573–74, 576–77,
17 581–82, 584–85, 587–88, 593–99. Plaintiff’s mental examinations also show she was frequently
18 on alert and hypervigilant about her safety, despite having other normal findings, and Plaintiff’s
19 counselor noted several instances where Plaintiff displayed confusion and poor memory. AR
20 576–77, 590, 603, 612–13.

21 In Plaintiff’s progress note, Plaintiff’s counselor evaluated that she has a serious
22 functional impairment due to her tendencies to withdraw from and avoid social interactions, as
23 well as inability to “perform close to usual standards in school, work, parenting, or other

obligations.” AR 603. Plaintiff’s counselor also noted that despite Plaintiff’s “good attendance and a high degree of cooperation,” Plaintiff “has not responded to trauma treatment, an outcome consistent with other people who have suffered traumatic brain injury.” AR 605. Plaintiff’s counselor further noted that despite Plaintiff’s regular engagement with counseling, she still had concentration and memory issues that prevent her following through with her case management goals. AR 605.

Overall, Plaintiff’s treatment records, as cited by the ALJ, are more aligned with Plaintiff’s testimony than they are inconsistent. Accordingly, in rejecting Plaintiff’s testimony based on objective medical evidence, the ALJ erred.

3. Dr. Ruddell

In June 2021, Dr. Ruddell completed an evaluation of Plaintiff’s mental health and opined that due to her mental health symptoms, Plaintiff has moderate to severe limitations in basic work activities. AR 621.

ALJs must consider every medical opinion in the record and evaluate each opinion’s persuasiveness, with the two most important factors being “supportability” and “consistency.”! *Woods v. Kijakazi*, 32 F.4th 785, 791 (9th Cir. 2022); 20 C.F.R. § 416.920c(a). Supportability concerns how a medical source supports a medical opinion with relevant evidence, while consistency concerns how a medical opinion is consistent with other evidence from medical and nonmedical sources. *See id.*; 20 C.F.R. §§ 416.920c(c)(1), (c)(2). Under the new regulations, “an ALJ cannot reject an examining or treating doctor’s opinion as unsupported or inconsistent without providing an explanation supported by substantial evidence.” *Woods*, 32 F.4th at 792.

The ALJ rejected Dr. Ruddell’s opinion due to its lack of supportability and its inconsistency with Plaintiff’s longitudinal record. AR 133. The ALJ’s assessment is not

1 supported by substantial evidence.

2 The ALJ first noted the opinion was provided in a check-box format and lacked any
3 explanation or laboratory findings. AR 133. But the ALJ overlooked the fact that Dr. Ruddell
4 based her findings on a mental status examination she administered herself, and that the results
5 of that examination could reasonably support her proposed limitations. *See* AR 621–22.

6 The ALJ’s rejection of Dr. Ruddell’s opinion based on its inconsistency with the record is
7 also not supported by substantial evidence. AR 133. As discussed in the previous section,
8 Plaintiff’s treatment records show she continued to have issues with her anger, irritability,
9 memory, and concentration, and that her functionality level was severe. These findings are not
10 inconsistent with Dr. Ruddell’s opinion that Plaintiff would have significant difficulties with
11 basic work activities, such as performing activities within a schedule, learning new tasks, and
12 completing a workday without interruptions from psychologically based symptoms. The ALJ
13 specifically cited to a treatment note showing Plaintiff expressed wanting to vacation with
14 family, but this fails to detract from Dr. Ruddell’s opinion—the records show that even when
15 Plaintiff expressed excitement about the prospect of interacting with family, she still had to
16 discuss with her counselor how to best interact with them to avoid any of her symptom triggers.
17 AR 133 (citing AR 614–15).

18 The ALJ also rejected Dr. Ruddell’s opinion because it was a one-time examination and
19 because she was not Plaintiff’s treating source. AR 134. The ALJ may consider these factors
20 when evaluating a medical opinion, 20 C.F.R. § 416.920c(c)(3), but primary focus is given to an
21 opinion’s supportability and consistency. 20 C.F.R. § 416.920c(b)(2). The Court has found the
22 ALJ’s supportability and consistency findings are not sufficiently supported by Plaintiff’s record,
23 therefore the Court cannot say rejecting Dr. Ruddell’s opinion based solely on her relationship

1 with Plaintiff is sufficient to uphold the ALJ's decision.

2 **4. Scope of Remand**

3 Plaintiff requests the Court remand this matter for an award of benefits, or alternatively,
4 for a new hearing. Dkt. 12 at 9.

5 Remand for an award of benefits "is a rare and prophylactic exception to the well-
6 established ordinary remand rule." *Leon v. Berryhill*, 880 F.3d 1041, 1044 (9th Cir. 2017). The
7 Ninth Circuit has established a three-step framework for deciding whether a case may be
8 remanded for an award of benefits. *Id.* at 1045. First, the Court must determine whether the ALJ
9 has failed to provide legally sufficient reasons for rejecting evidence. *Id.* (citing *Garrison*, 759
10 F.3d at 1020). Second, the Court must determine "whether the record has been fully developed,
11 whether there are outstanding issues that must be resolved before a determination of disability
12 can be made, and whether further administrative proceedings would be useful." *Treichler v.*
13 *Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1101 (9th Cir. 2014) (internal citations and
14 quotation marks omitted). If the first two steps are satisfied, the Court must determine whether,
15 "if the improperly discredited evidence were credited as true, the ALJ would be required to find
16 the claimant disabled on remand." *Garrison*, 759 F.3d at 1020. "Even if [the Court] reach[es]
17 the third step and credits [the improperly rejected evidence] as true, it is within the court's
18 discretion either to make a direct award of benefits or to remand for further proceedings." *Leon*,
19 880 F.3d at 1045 (citing *Treichler*, 773 F.3d at 1101).

20 Only the first step is met here, as the Court has found the ALJ erred in evaluating
21 Plaintiff's testimony and Dr. Ruddell's medical opinion. However, both are contradicted by
22 other evidence in the record, such as the medical opinions of the state agency consultants, raising
23 a conflict in the record that requires a resolution. *Dominguez v. Colvin*, 808 F.3d 403, 409 (9th

1 Cir. 2015) (“[T]he district court must ‘assess whether there are outstanding issues requiring
 2 resolution *before* considering whether to hold that [the rejected evidence] is credible as a matter
 3 of law.’”) (quoting *Treichler*, 775 F.3d at 1105); AR 90–91, 105–06. Plaintiff also has not
 4 analyzed the factors the Court considers before remanding for an award of benefits, nor shown
 5 any rare circumstances. Accordingly, the Court finds remanding for further proceedings is the
 6 more appropriate remedy.

7 On remand, the ALJ shall reevaluate Plaintiff’s testimony and Dr. Ruddell’s opinion
 8 regarding her mental health symptoms. The ALJ shall reevaluate all relevant steps of the
 9 disability evaluation process and conduct all proceedings necessary to reevaluate the disability
 10 determination in light of this Order.

11 CONCLUSION

12 For the foregoing reasons, the Commissioner’s final decision is **REVERSED** and this
 13 case is **REMANDED** for further administrative proceedings under sentence four of 42 U.S.C. §
 14 405(g).

15 DATED this 28th day of September, 2023.

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18 RICARDO S. MARTINEZ
 19 UNITED STATES DISTRICT JUDGE
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